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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,910	11/24/2003	Roxanne E. Bakula	SMI . P . US0026	5290

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AKRON, OH 44308

EXAMINER
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VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/720,910

Applicant(s)

BAKULA ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 1 is objected to because of the following informalities:

Claim 1, line 7, "greater extend" should be --greater extent--

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,185,863 to Tabbert in view of U.S. Patent No. 5,572,826 to Weder.

Regarding Claim 1, Tabbert teaches a method for the propagation of and aeroponic growing of plants comprising transplanting a living plant into a vessel of polymer foam (Tabbert #1) having at least one cavity (Tabbert #3) distal to said plant; applying water (Tabbert abstract line 5) to said foam sufficient to saturate said foam and concurrently providing water and moist air in said first cavity, whereby roots inherently would extend into and grow within said cavity to a greater extend than their growth into said foam (This is inherent since the claim does not specify the duration of time that the growth takes place, early on in the plant development it will inherently be growing to the path of least resistance thus into the cavity).

Art Unit: 3643

Tabbert teaches that natural flowers, twigs, branches, fruits are planted in the foam vessel (Tabbert Col. 1 line 5-6). Tabbert is silent on roots. However, Weder teaches that it is old and notoriously well-known to plant both cut flowers and plants with roots in water saturated foam (Weder #40 and Col. 5 line 8-10, 19, 22, 34, 38, 41, 44). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Tabbert with the teachings of Weder since the modification is merely the selection of known alternate floral grouping selected on achieving a desired aesthetic design for an arrangement.

Regarding claims 2 and 14, Tabbert as modified teaches said vessel comprises a foam core, defining an upper surface, a base and a sidewall, said at least one first cavity provided in said foam core (Tabbert #3), proximal to said base; a first passageway (Tabbert #4) extending through said foam core and into said first cavity; and a waterproof outer coating (Tabbert #2).

Regarding Claims 3 and 4, Tabbert as modified teaches said step of applying water includes the step of directing water into said first passageway (Tabbert Col.2 line 5).

Claims 4-13 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,185,863 to Tabbert in view of U.S. Patent No. 5,572,826 to Weder as applied to claims 2 and 14 above, and further in view of U.S. Patent No. 1,213,331 to Burleigh.

Regarding Claims 5-7 and 15, Tabbert as modified teaches said vessel further comprises at least one second cavity (Tabbert #5) in said upper surface, said first passageway (Tabbert #4) extending through said foam core communicating between said first (Tabbert #3) and second cavities; an external flange proximal to said upper surface.

Tabbert as modified is silent on a peripheral trough between said upper surface and said external flange; at least one bore passing through said foam core, providing a communication between said trough and said first cavity whereby the addition of water to said trough will fill said first cavity at least partially and wet said foam core. However, Burleigh teaches a vessel with a trough in a flange (Burleigh #17) and a bore communicating with the first cavity for water addition (Burleigh #16). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the teachings of Tabbert as modified by Weder with Burleigh for a time efficient means of replenishing the water supply once plants have been planted in the vessel.

Regarding Claim 8, Tabbert as modified teaches a waterproof outer coating (Tabbert #2).

Regarding Claims 9, 10, 16 and 17, Tabbert as modified is silent on the dimensions for the cavity height and width. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the teachings since the modification is merely a change in size to accommodate different size plant root balls or bunches of flowers and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claims 11 and 18, Tabbert as modified inherently teaches that the second cavity (Tabbert #5) is dimensioned to fit the root ball of a plant transplanted therein (it is inherent since the size of the root ball is dependent on the plant variety and the stage of development of the plant, some plants have larger root balls than others but the cavity of Tabbert inherently will have to fit some root ball that is out there).

Regarding Claims 12 and 19, Tabbert as modified teaches the foam core is selected from the group consisting of hydrophilic polymer foams (Tabbert Col. 1 line 4).

Regarding Claims 13 and 20, Tabbert as modified teaches the coating is selected from epoxies, polyurethanes and phenolic resins (Tabbert Col. 1 line 8).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 4,355,484.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

18 January 2005



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600